IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

M.F.A.No.1573 of 1998(D)

O.P.(M.V).278/1987 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, WAYANAD, KALPETTA.

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APPELLANT/2ND RESPONDENT:-

THE NEW INDIA ASSURANCE CO. LTD., KALPETTA,
NOW REPRESENTED BY ITS DEPUTY MANAGER,
REGIONAL OFFICE, M.G.ROAD, KOCHI - 682 011.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS/PETITIONER & RESPONDENTS 1 & 5:-

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1. E.MOIDU, S/O.ABDULLA, ELANGOLI HOUSE,
   P.O.CHENNALODE, (VIA) KALPETTA, WAYANAD DIST.

2. K.ALI, S/O.ISMAILKUTTY, KAMBATH HOUSE,
   P.O.KALPETTA, WAYANAD DISTRICT.

3. K.K.CHANDRA SEKHARAN, S/O.C.H.KUNHIRAMAN NAMBIAR,
   P.O.KUNNAMBATTA, KOTTAPPADI AMSOM.

R1 BY ADV. SRI.MATHEW ABRAHAM

R3 BY ADV. SRI.A.K.SRINIVASAN
SRI.A.S.BENOY

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.1573 of 1998-D

Dated, this the 27th day of March, 2007

JUDGMENT

2nd respondent-Insurer in O.P.(M.V.).No.278 of 1987 on the file of Motor Accidents Claims Tribunal, Kalpetta is the appellant. The first respondent filed a petition claiming compensation alleging that on 28.3.1987 he was travelling in a jeep bearing registration No.KLD 2971 from Venniyode to Kambalakkad and when the jeep reached one furlong away from Venniyode bus stop, the same met with an accident and he sustained injuries. According to the 1st respondent, he was treated in a hospital at Kozhikode for two days and thereafter he was treated at Karanthur Kairali Vaidyasala. According to him, he spent a lot of money for treatment and claimed a compensation of Rs.1,10,652/-. 2nd respondent filed a written statement contending that he sold the vehicle to the 3rd respondent on 9.7.1986 and so he was not liable to pay any amount. The appellant filed a written statement contending that its liability was limited to Rs.15,000/- per passenger. It was contended that

the compensation claimed was highly excessive and the Insurer was not liable to pay any compensation under Section 92A of the Motor Vehicles Act. 3rd and 4th respondents in the O.P. filed a written statement contending that the 1st respondent was not a traveller in the jeep and he had not sustained any injury as averred in the petition. It was further contended that the amount claimed was excessive and even if the claimant was entitled to get any compensation, appellant and 2nd respondent are liable to pay the same. The 5th respondent in the O.P. filed a written statement contending that he sold the vehicle to 2nd respondent and at the time of accident, the 2nd respondent was the owner of the vehicle and hence he was not liable to pay any compensation. The 6th respondent in the O.P. filed written statement contending that the accident was not due to the rash or negligent driving of the jeep by the driver. It was contended that the accident occurred due to the carelessness of the 1st respondent-applicant. It was further contended that in case the 1st respondent was entitled to get any compensation, the Insurer was liable to pay the same. Initially the claim petition was dismissed, which was subsequently remanded by this Court as per judgment dated

23.9.1997 in M.F.A.No.325 of 1990. The Tribunal found that the 1st respondent was entitled to get a compensation of Rs.32,480/-. It was further found that the accident occurred due to the rash or negligent driving of the jeep by the driver who was dead at the time of filing of the claim petition. The Tribunal found that the appellant and respondents 2 and 3 are jointly and severally liable to pay the compensation.

2. The 1st respondent-claimant had given oral evidence as P.W.1. But in the judgment it is stated that no oral evidence was adduced in the case. In the appendix of the judgment also it is stated that no witness was examined for and on behalf of the claimant. In the draft award initially two persons alone were made liable. It would appear that it was respondents 1 and 6 in the O.P. But, subsequently, 2nd respondent in the O.P. was also added. But in the copy, it is seen that the number '6' was erased and '5' was added. It is to be noted that the case of the 2nd respondent was that he sold the vehicle to the 3rd respondent. The 3rd respondent raised a contention that he sold the vehicle to 2nd respondent. Ext.A8 R.C. particulars shows that the vehicle was purchased by the 2nd respondent on 25.9.1985 and he sold

the vehicle to the 6th respondent in the O.P. on 2.2.1987. Of course, in the meanwhile the parties might have sold the vehicle to the 3rd respondent under an agreement, but that fact was not entered in the R.C. book. The Tribunal awarded an amount of Rs.980/- for transportation to hospital, Rs.1,000/- for extra nourishment, Rs.300/- for damage to clothing and articles, Rs.2,000/- for medical expenses and Rs.200/- for bystander's expenses. It awarded an amount of Rs.3,000/- as compensation for pain and suffering. Thereafter the Tribunal awarded a lump sum amount of Rs.25,000/- to the 1st respondent-applicant making a total compensation of Rs.32,480/-. No reason whatsoever is stated to to how this Rs.25,000/- was arrived at. There is no discussion as to whether the injuries referred in the Certificate Exhibit X1 are the result of the accident. What are the injuries sustained by the 1st respondent-claimant was not discussed. So, I have no other option, but to set aside the entire award and again remand the matter for fresh disposal in accordance with law.

In the result, the appeal is allowed. The award dated 30.6.1998 is hereby set aside. The matter is remanded. The

Tribunal is directed to take O.P.(M.V.) No.278 of 1987 back to file and dispose of the same in accordance with law after affording a brief but reasonable opportunity to the parties to adduce further evidence. C.M.P.No.6395 of 1998 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-